IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4989 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR MUNICIPAL CORPORATION

Versus

DHARAMSHI PARSOTTAMBHAI LODHIA

Appearance:

MR HS MUNSHAW for the Petitioner.

MR GK RATHOD for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/04/2003

ORAL JUDGEMENT

1. The respondent herein was appointed as a daily rated Sweeper on temporary and on ad hoc basis since 1990. He raised an industrial dispute for giving him permanency on the post of Clerk. The Industrial Tribunal, Bhavnagar, by the impugned order, allowed the

said Reference and ordered that the concerned workman should be given the benefit of confirmation as Clerk on completion of 240 days from 28.7.1990, and on completion of 240 days after 28.7.1990, upto 31.12.1997, the Tribunal awarded benefit of pay scale, etc., on notional basis, and from 1.1.1998, it is ordered that he should be given benefit of emoluments, other consequential benefits, arrears of salary, etc., as a confirmed Clerk, in cash. The said Award is under challenge in this petition.

2. Mr.Munshaw, learned Advocate for the petitioner, submitted that the Tribunal should not have issued such directions, as, by the impugned Award, the respondent-workman has been given the benefit of confirmation on the post of Clerk even from the date earlier than the date of making reference. He submitted that, for the earlier period, the workman was serving as a Sweeper and not as a Clerk, and, therefore, no benefit of confirmation can be given on completion of 240 days from 28.7.1990, and, at the most, the said benefit can be availed of only from the date of making reference and not from the earlier period. In this behalf, he has relied upon a decision of this Court rendered in Letters Patent Appeal No.1753 of 1999 and other cognate matters, wherein it is observed as under :-

> " ... ...
>
> The Tribunal has not at all considered this aspect and has merely stated that benefit shall stand extended on completion of 180 days of work in a year. The Tribunal ought to have seen that the benefit can be extended from the date of demand only. Ina given case, the benefit may not be extended as prayed for. In the instant case, it appears that some of the workmen are claiming from 1983, 1984, 1986, 1988, 1989 and onwards. If they wee entitled to get the benefit, they ought to have moved the appropriate forum in time. However, it would be just and proper, in our opinion, to grant benefit from the date of demand and not earlier. The award shall sand modified accordingly. Appeals stand allowed. Mr.Patel, for respondents, was not able to point out as to how demand can be granted from the date earlier than the demand.

> 3. Mr.Lakhani appearing for the appellants submitted that the benefits which are required to be extended to the respondents-workmen shall be extended within a reasonable period, viz. a period of six weeks from today."
>
> ... ..."

3. Mr.Munshaw also submitted that, at the relevant time, there was no vacancy even in the cadre of Sweeper and the concerned workman was working as the daily rated Sweeper. On behalf of the concerned workman, it is stated that he is agreeable to get the benefit of such confirmation on the post of Clerk with effect from 1.1.2001 and he is ready to forgo the prayer for confirmation from the earlier date, which is granted by the Tribunal. Copy of the letter addressed by the concerned workman is also given to Mr.Munshaw, who is appearing for the Corporation. In my view, the suggestion of the concerned workman is reasonable, as, he is willing to give up his demand for his confirmation from the date of making the reference and he has agreed to accept the said benefit of confirmation as Clerk from 1.1.2001. Mr.Munshaw submitted that, in principle, this suggestion cannot be said to be unreasonable or against the interest of the Corporation.

4. Considering the facts and circumstances of the case, therefore, following order is passed :-

The Award of the Tribunal is modified to the extent that the Corporation is directed to give the benefit of confirmation to the concerned workman, i.e. confirmation as Junior Clerk in the Corporation, with effect from 1.1.2001. The Corporation is also directed to give the benefit to the said workman on the basis of the said aspect, i.e. having been treated to have been confirmed from 1.1.2001, and whatever benefit which is required to be paid to the concerned workman, the same should be made available within a period of six weeks from today.

5. Rule is partly made absolute with no order as to costs. Writ to be sent forthwith.

23rd April, 2003 (P.B. Majmudar, J.)

****

(apj)